

**Statement to the Government Administration and Elections Committee  
By Chris Powell, Managing Editor, Journal Inquirer  
On behalf of the Connecticut Council on Freedom of Information**

***In Regard to House Joint Resolution 99***

An Amendment to the State Constitution Concerning the Practices and Procedures of the Courts

***In Support of Raised Bill 1152***

An Act Concerning the Disclosure of Certain Reports and the Definition of Invasion of Privacy Under the Freedom of Information Act

***In Opposition to Committee Bill 5214***

An Act Concerning Posting Legal Notices on the Web Site of a Municipality

My name is Chris Powell, I live in Manchester, I'm the managing editor of the Journal Inquirer there, and I'm legislative chairman for the Connecticut Council on Freedom of Information, which I represent in addressing several bills on your agenda today.

We're grateful to you for pressing the issue raised by House Joint Resolution 99, a constitutional amendment on court procedures, but we think that this amendment is not strong enough. It would allow the Judicial Department to continue to legislate its procedures largely on its own. We support another constitutional amendment on the subject, Senate Joint Resolution 46, which is awaiting a hearing in the Judiciary Committee and is simple, direct, and clear in establishing that court procedures can be legislated by ordinary statute, just as they are legislated under the federal system and under the constitutional systems of about two thirds of the states.

The representative of the Connecticut Bar Association has told you today that Connecticut's judiciary and legislature have worked well together for 200 years and that writing court procedures in the legislature would subject them to politics, as if that would be something new. We disagree.

Because Connecticut's judiciary long has intimidated the General Assembly and governor out of their constitutional power to define the powers and jurisdiction of the courts, you in the legislature never know anymore which laws you pass in regard to judicial practices will be complied with and which laws will be summarily discarded as unconstitutional upon a claim of separation of powers. In fact, the legislature has been separated from ITS power -- the power of legislation. For rule making IS legislating, and it is time to settle this issue in favor of the legislature and the governor, the elected and democratic branches of government. This will not compromise an independent judiciary, for an independent judiciary is one that decides cases on its own, not a judiciary that decides cases AND writes the laws by which those cases are decided.

As for the suggestion that the legislature is too political and the judiciary is not, there is plenty of politics in the judiciary. Indeed, Connecticut's immediate past chief justice recently was reprimanded by the Judicial Review Council precisely for injecting politics into the procedures of the courts. The difference is that politics in the judiciary is PRIVATE politics while politics in the legislature is PUBLIC politics -- politics everyone can see and participate in. There's nothing wrong with that. That's democracy -- public politics.

No one is suggesting that the judiciary should not be involved in the writing of its rules. But those rules, being legislative in nature, must be decided, in the end, by the elected branches of government. Our Constitution requires it, even if it is not yet being enforced that way.

The Connecticut Council on Freedom of Information joins the Freedom of Information Commission in supporting Raised Bill 1152, An Act Concerning the Disclosure of Certain Reports and the Definition of Personal Privacy Under the Freedom of Information Act. The commission's executive director has told you today that this bill puts into law the definition of personal privacy that has been followed by the state Supreme Court since it decided the case of Perkins vs. FOIC in 1993. But today you also have heard the state victim advocate ask that you put into the freedom-of-information law a privacy exemption that goes

far beyond this long-established precedent, an exemption allowing privacy claims to be made on behalf of victims of crime to prevent disclosure of crime evidence.

Connecticut's freedom-of-information law already imposes many restrictions on the disclosure of crime evidence. Broader exemptions from disclosure will be used mostly not by innocent victims but by guilty government agencies trying to conceal their own misconduct or negligence. Our criminal-justice system, like our news media and most other institutions, is faulty enough. It needs more scrutiny, not less.

The Connecticut Council on Freedom of Information opposes Committee Bill 5214, An Act Concerning Posting Legal Notices on the Web Site of a Municipality.

In effect this bill would repeal Connecticut's longstanding requirement for municipalities to give the public actual notice of government business via newspaper advertising. The bill would replace actual notice with mere TECHNICAL notice, the posting of notices on municipal Internet sites. Let's please not pretend that anyone is going to get notice of municipal business by searching municipal Internet sites. Municipal Internet sites have no regular and sizeable audiences and do not reach any substantial communities. ONLY NEWSPAPERS DO THAT. Legal notices placed in newspapers purchase a real service. They notify large communities affected by government business and they gain the attention of the news media.

Legal notices also provide important revenue to newspapers, which, as you may know, are in especially fragile condition financially. Many newspapers lately have been reducing their coverage of state and municipal government. Why? Because, for various reasons, the public is losing interest in government and coverage of government does not attract readership as much as coverage of things like silly celebrity gossip.

You can see the public's declining interest in government in declining participation in elections, particularly municipal elections. Even after their recent reductions in coverage, Connecticut's newspapers still cover government all out of proportion to the public's interest. Nobody else even tries to provide coverage of government. If that coverage is to continue, somebody will have to pay for it. Legal notice advertising is an important way that coverage is paid for.

A few months ago, as daily newspapers in two Connecticut cities, Bristol and New Britain, were about to go out of business, leaving those communities without any focus of community, many public officials clamored for state government to do something to help keep the papers going. Whatever their faults, it was agreed that newspapers are crucial to community well-being. Fortunately a buyer was found for the Bristol and New Britain papers and he and his staff are struggling heroically to save them and the communities they serve. So how ironic it would be if state government's response to the crisis of declining news coverage of government, the crisis of declining community, turned out to be to discontinue legal notices, to make the public even more ignorant.